UNITED
NATIONS

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 808

Case No. 914: WHEELER

Against: The Secretary-General of the International Maritime Organization

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Mayer Gabay; Ms. Deborah Taylor Ashford;

Whereas, on 16 June 1995, Patricia Wheeler, a former staff member of the International Maritime Organization (hereinafter referred to as the IMO), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 4 March 1996, the Applicant, after making the necessary corrections, again filed an application containing pleas requesting the Tribunal:

> "To find that the Respondent's decision to terminate the Applicant's fixed-term contract on 15 March 1995 ran counter to the terms of that contract and was therefore unlawful;
>
> To order the Respondent to pay to the Applicant a sum equivalent to the salary she would have earned if she had not been prevented by the Respondent from completing her contract."

Whereas the Respondent filed his answer on 29 August 1996;

Whereas, the facts in the case are as follows:

The Applicant entered the service of the IMO on 16 May 1994, on a fixed-term appointment, at the P-4, step I level, with the

title of Head, English Translation Section. The post had been advertised by Vacancy Notice No. 93-3, at a grade level of "P-4/P-5 according to qualifications and experience". On 11 April 1994, the Secretary-General wrote to the Applicant, offering her the post at the P-4, step I level. She reported for duty on 16 May 1994. However, the Applicant insisted that she should be graded at the P-4, step III level, which had been the level of her post at the Registry of the International Court of Justice, where she had been previously employed.

Thereafter, based on negotiations, on 9 June 1994, the Secretary-General wrote to the Applicant, offering to revise her appointment as Head of the English Translation Section, at the grade P-4, step I level, by adding the following two qualifications: "(i) the appointment will be subject to a probationary period of one year; (ii) in common with other staff members of the Organization, you are expected to conduct your behaviour in a manner befitting an international civil servant and your position in the Organization."

The Applicant accepted this revision and a Personnel Action Form, dated 14 June 1994, was prepared giving the Applicant a two year fixed-term appointment, with effect from 16 May 1994.

On 9 March 1995, the Director, Administrative Division, wrote to the Applicant notifying her of the termination of her appointment following the completion of her probationary period on 15 May 1995. The Applicant was also granted her request, made on 7 March 1995, for unpaid leave to join the UN Volunteers from 13 March to 15 May 1995.

On 18 April 1995, the Applicant wrote to the Secretary-General, requesting a review of the decision to terminate her appointment. On 10 May 1995, the Secretary-General replied, confirming his decision to terminate her services. Furthermore, in reply to a subsequent communication from the Applicant, the Secretary-General, on 31 May 1995, confirmed that the decision was "unequivocally clear that [her] services with IMO ha[d] been terminated from 15 May 1995".

By a letter dated 16 June 1995, the Applicant submitted an appeal directly to the Tribunal. On 14 July 1995, the Executive Secretary of the Tribunal informed the Applicant that her communication did "not constitute an application instituting proceedings in accordance with article 7 of the Rules of the Tribunal", since "[i]t would appear, from your communication, that your dispute has not been submitted to the Joint Appeals Board of the International Maritime Organization." The communication and attachment were returned to the Applicant.

On 25 September 1995, the Applicant wrote to the Secretary-General, making reference to her exchange of correspondence with the Tribunal and requesting his agreement to the direct submission of the dispute to that body without first obtaining the advice of the Joint Appeals Board (JAB).

On 10 November 1995, the Director, Administrative Division, wrote to the Applicant, as follows:

> "I would like to remind you that you were informed of the Secretary-General's decision to terminate your appointment following the completion of your probationary period in my memorandum to you of 9 March 1995. You asked the Secretary-General to review his decision in your letter of 18 April 1995 to which you received a decision by the Secretary-General in a letter dated 10 May 1995. You then had the option to appeal to the Joint Appeals Board in accordance with rule 111.2(b) which states that '[i]f the staff member wishes to make an appeal against the answer received from the Secretary-General [sic], he shall submit his or her appeal in writing to the Chairman of the Joint Appeals Board, [...], within one month from the date of receipt of the answer. If no reply has been received from the Secretary-General within one month of the date the letter was sent to the Secretary-General, the staff member shall, within the following month, submit his or her appeal in writing to the Chairman of the Joint Appeals Board, [...].'
>
> It is the Organization's position that as no such appeal was received from you within the set time limit, your appeal contained in the letter to the Secretary-General dated 25 September 1995 is not receivable. However, the final view on receivability lies with the Joint Appeals Board (JAB), and

> if therefore you wish to proceed with your appeal, you will need to write accordingly to the Chairman of the JAB (through the Director of Administration). Thus, in answer to your letter of 1 November 1995 and your letter of 25 September, it will be clear that the Secretary-General does not consent to a direct submission of your application to the United Nations Administrative Tribunal."

On 16 November 1995, the Applicant lodged an appeal with the JAB. The JAB adopted its report on 7 February 1996. Its conclusion reads as follows:

> "The first point to be considered was the receivability of the petition. After due consideration of all the facts surrounding this issue and with due regard to the provisions of the relevant staff rules, it was the unanimous decision of the Board that the appeal was inadmissible as it was time-barred."

On 29 February 1996, the Secretary-General transmitted a copy of the JAB report to the Applicant and informed her as follows:

> "The JAB has found that your appeal was inadmissible as it was time-barred and I am writing to advise you that I have decided to accept this recommendation."

On 4 March 1996, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contention is:

The decision of the Secretary-General to terminate her appointment was not based on any performance review but was motivated by prejudice arising from the dispute between her and the Organization regarding the terms of her appointment.

Whereas the Respondent's principal contentions are:

1. The Applicant failed to observe the mandatory time-limits of staff rule 111.2 for appealing the administrative decision of 9 March 1995 to terminate her appointment.

2. In consequence of the Applicant's failure to observe the time-limits of staff rule 111.2, her appeal is time-barred and therefore not receivable by the Tribunal.

3. The merits of the Applicant's appeal have not been considered by the JAB and therefore should not be considered by the Tribunal.

The Tribunal, having deliberated from 2 to 25 July 1997, now pronounces the following judgement:

I. The Applicant appeals a decision of the Secretary-General dated 29 February 1996, accepting a recommendation by the Joint Appeals Board (JAB) that the Applicant's appeal "was inadmissible as it was time-barred."

II. On 9 March 1995, the Applicant was notified of the termination of her appointment, following the completion of her probationary period, on 15 May 1995. On 18 April 1995, the Applicant requested the Secretary-General to review this administrative decision. On 10 May 1995, the Secretary-General confirmed his decision to terminate her services. On 11 May 1995, the Secretary-General's letter of 10 May 1995, confirming his decision to terminate the Applicant's services, was sent by facsimile to the Applicant in Rwanda, in the care of the Resident Representative, United Nations Development Programme. The Tribunal assumes that the Applicant received this communication on or about 15 May 1995.

On 16 June 1995, the Applicant appealed this decision directly to the Administrative Tribunal. On 14 July 1995, the Executive Secretary of the Tribunal acknowledged receipt of the Applicant's appeal, noting that:

> "... article 7 [of the Statute of the Tribunal] provides that the staff member instituting proceedings has to have 'previously submitted the dispute to the joint appeals body provided for in the staff regulations and the latter has communicated its opinion to the Secretary-General, except where the Secretary-General and the applicant have agreed to submit the application directly to the Administrative Tribunal.'"

On the same date, the Executive Secretary returned the communication to the Applicant, and sent a copy to the Director, Administrative Division, to inform him of the Applicant's action.

On 25 September 1995, the Applicant requested the Secretary-General's agreement to submit her appeal directly to the Tribunal without the recommendation of the JAB. The Secretary-General refused this request. Subsequently, on 16 November 1995, the Applicant lodged her appeal with the JAB, which recommended that "the appeal was inadmissible as it was time-barred."

III. The Applicant requests the Tribunal to find that the Respondent's decision to terminate her contract was unlawful and to order the Respondent to pay her a sum equivalent to the salary she would have received had she completed her contract.

IV. The Tribunal must first determine whether the application is time-barred. Staff rule 111.2(b) provides that an appeal against an administrative decision must be submitted by the staff member to the Chairman of the JAB "within one month from the date of receipt of the answer".

The Tribunal notes that the Applicant lodged her appeal with the Tribunal on 16 June 1995, which is within the time limits set forth in staff rule 111.2(b). However, the appeal was not addressed to the correct body which should have received it, i.e., the JAB. Instead it was sent to the Tribunal. In accordance with the usual practice of dealing with incorrectly submitted appeals, on 14 July

1995, the Executive Secretary of the Tribunal sent a copy of the Applicant's appeal to the Director of the Administrative Division, who should have forwarded the appeal to the JAB.

The Tribunal considers that the Executive Secretary's forwarding of the Applicant's appeal to the Director of the Administrative Division, put the Administration on notice that the Applicant had filed an appeal within the time limits of staff rule 111.2(b). The Tribunal believes that the Director of the Administrative Division should have forwarded the appeal to the JAB or, at least, should have written to the Applicant, acknowledging receipt of her appeal and outlining the correct procedures for lodging appeals.

Thus, the Applicant's initiation of the correct appeals process was made by proxy by the Executive Secretary of the Tribunal, well within the time-limit stipulated in staff rule 111.2(b). Accordingly, the Tribunal concludes that the Applicant's appeal is not time-barred.

V. For the foregoing reasons, the Tribunal remands the application to the JAB for its consideration on the merits.

(Signatures)

Hubert THIERRY
President

Mayer GABAY
Member

Deborah Taylor ASHFORD
Member

Geneva, 25 July 1997

R. Maria VICIEN-MILBURN
Executive Secretary